

REMARKS

Applicants thank the Examiner for the thorough consideration given the present application.

Claims 5-8, 12, 14, 15 and 19-24 are pending in the present application. Claims 5 and 20 are independent. Claims 5 and 20 have been amended. No new matter is involved.

Reconsideration of this application, as amended, is respectfully requested.

Objection to the Specification

The Office Action objects to the term "initializes a sum value", which was changed from "initializes a sum variable" in the Amendment filed June 23, 2003. The Amendment was made to the paragraph beginning on page 6, line 20 of this Application. Basis for the Amendment is found in Applicants' original disclosure, for example, in Fig. 4, step S2, which clearly states "initialize a sum value." The Office Action indicates that the clause "initialize a sum value" does not refer to any kind of value to be added. Applicants respectfully submit that step S1 of Fig. 5 states "power on and/or tray closes" and that step S2 of Fig. 5 states "initialize a sum value." This language is referred to on page 6, lines 20, ff., which states, "[W]hen the disk tray closes or at power-on of the optical disk drive (S1), the microcomputer initializes a sum variable (S2) and starts a focus search." To one of ordinary skill in the art at the time the invention was made, this means that a

sum value, stored as the result of any previously conducted steps S4 and S5, is refreshed because the disc drive tray is newly closed. In other words, a sum value result of previously performed steps should be refreshed because subsequently performed steps S4 and S5 are to be conducted, for example, in the present state of a newly-closed disc drive tray. The language “initialize a sum value” is used to characterize such a situation.

Reconsideration and withdrawal of the objection is respectfully requested.

Claim Rejections Under 35 USC §112, Second paragraph

Claims 5-8, 12, 14, 15 and 19-24 stand rejected under 35 USC §112, second paragraph as being indefinite.

With respect to claim 5, line 7, “summing the values of the sampled focus error signals” clearly reads on, for example, obtaining the sum of sampled focus error discussed on page 7, lines 16-26, a disclosure that is clear in and of itself.

A similar comment is applicable to “summing the values of sampled focus error signal” in claim 20, line 6. The assertion that “[A]pplicant should clarify how the focus error signal is summed” is answered by stating that one of ordinary skill in the art knows how to sum signals using conventional techniques. Applicants respectfully submit that this last question has nothing to do with indefiniteness and should not be included in a rejection based on indefiniteness. Applicants respectfully submit that the terminology in issue is clear in meaning.

Claim 22 has been amended to recite that “sampling of the focus error signal by the analog-to-digital converter is performed if a focus OK signal is asserted.” Applicants respectfully submit that this language is clear and definite.

Accordingly, reconsideration and withdrawal of this rejection of claims 5-8, 12, 14, 15 and 19-24 under 35 USC §112, second paragraph as being indefinite is respectfully requested.

Rejection of claims under 35 USC §102(b)

Claims 5, 6, 8, 14, 15 and 20-23 are rejected under 35 USC §102(b) as being anticipated by U.S. Patent 5,903,531 to Satoh et al (hereinafter, “Satoh”). This rejection is respectfully traversed.

A prior art reference anticipates the subject of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see, In re Paulsen, 30 F.3d 1475, 1478, 1479, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24

USPQ2d 1443, 1444(Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788(Fed. Cir. 1984).

Applicants respectfully submit that the Office Action does not make out a *prima facie* case that claims 5, 6, 8, 14, 15 and 20-23 are anticipated by Satoh.

Satoh does not disclose "judging the existence of the optical disk in the optical disk drive." All that Satoh discloses is determining the type of optical disk that is present, i.e., whether the disk is a CD or a DVD, for example. Satoh merely assumes that an optical disk is present and does not provide a step or a system that judges whether or not an optical disk is present in the optical disk drive.

The Office Action has not indicated where this positively recited feature is found in Satoh and Applicants have not been able to find where Satoh judges the existence of an optical disk.

Furthermore, the claims require using a focus error signal to judge whether a disk is present in an optical disk drive. Satoh, on the other hand, only uses a focus error signal to determine what kind of optical disk is in its apparatus. In Fig. 7. for example, step A4 only judges whether the detected optical disk is one layer of a CD or a DVD. Also, in Fig. 7, step Satoh merely judges whether the optical disc is a DVD-ROM or a DVD-RAM. In both steps, Satoh assumes that it has detected an optical disk.

Satoh discloses, in col. 5, lines 24-50, that its focus error signal error signal is imputed to an S-letter detector through a filter for reducing noise and to a

compensation amplifier. The output from the compensation amplifier is input to a driving circuit to become a focus control signal. As stated in col. 5, lines 47-50, "the system controlling portion makes judgments about the kinds of optical disks utilizing the S-letter detection level . . ."

Satoh only discloses using a focus error signal to judge/determine the kinds of optical discs that are present in its apparatus. There is absolutely no "judging the existence of an optical disk in an optical disk drive" in Satoh.

Apparatus claims 20-23 positively recite a combination of features including, for example, a microcomputer for determining the existence of the optical disk in the optical disk drive by summing the values of the sampled focus error signal, which are less than a first predetermined reference level, and determining whether the summed value is greater than a predetermined judging level. Satoh does not disclose this positively recited feature, either, and is not at all concerned with determining the existence of an optical disk.

Accordingly, Satoh simply does not anticipate claims 5, 6, 8, 14, 15 and 20-23, this rejection is improper, and it should be withdrawn.

Allowable Subject Matter

Claims 7, 12, 19 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank

the Examiner for the early indication of allowable subject matter. However, claims 7 and 12 are not rewritten in independent form at this time because independent claim 5, from which claims 7, 12 and 19 depend, and independent claim 20, from which claim 24 depends, are believed to be allowable for reasons stated above.

Conclusion

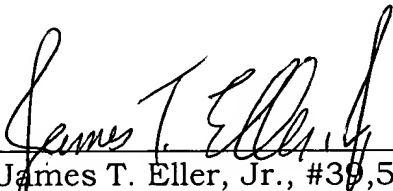
For the foregoing reasons and in view of the above clarifying amendments, Applicant respectfully requests the Examiner to reconsider and withdraw all of the objections and rejections of record, and earnestly solicits an early issuance of a Notice of Allowance.


Should there be any outstanding matters which need to be resolved in the present application, the Examiner is respectfully requested to contact Robert J. Webster (Registration No. 46,472) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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